

- (1) Claimant was employed by the respondent as an accounts receivable clerk for 12 years. Her job duties consisted primarily of operating a ten-key adding machine and a computer. In addition, she was required to file, write and do other miscellaneous

paperwork at her desk. She testified that 95 percent of her time was spent operating the computer which required her to turn her head to the right in order to see the computer screen and to move her head frequently up and down. She established that she worked from 40 to 55 hours per week under stressful conditions.

In 1989, claimant was diagnosed with rheumatoid arthritis and had been treated since that time by Dr. Richard B. Lies, a rheumatologist in Wichita, Kansas. Claimant testified that around the first of January 1995 she started having severe problems with pain in her neck. These problems accelerated to the point that she resigned on April 15, 1995 because she was unable to perform her job duties.

Since claimant's termination, she has been diagnosed with basilar invagination, which is a condition where the tip of the odontoid is impacted into the skull and is pressing against the brain stem. In order to relieve the claimant from her severe neck pain and to stabilize her neck condition, the claimant was referred to Glenn Amundson, M.D., an orthopedic surgeon with the Kansas University Surgery Association, Kansas City, Kansas. On June 23, 1995, the claimant underwent an occipital cervical fusion performed by Dr. Amundson. On the date of the preliminary hearing, February 13, 1996, the claimant remained under Dr. Amundson's care and, according to her testimony, had not been released to return to any type of employment.

The Administrative Law Judge found that claimant had proved a work-related accidental injury and ordered respondent to provide medical treatment by Dr. Amundson and weekly temporary total disability benefits. Respondent appeals and argues that claimant has not met her burden of proving that her work activities aggravated or accelerated her preexisting rheumatoid arthritis condition.

The definition of "personal injury" contained in the Kansas Workers Compensation Act was amended effective July 1, 1993 with the following limiting language:

"An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living."  
K.S.A. 44-508(e).

Respondent argues that, in this case, claimant's preexisting rheumatoid arthritis condition is a progressive disease that is aggravated by her normal activities of daily living. Consequently, there is no causal relationship between claimant's work activities that she performed while she was employed by the respondent and her resulting neck condition and subsequent surgical intervention.

In a workers compensation case, the law is very clear that if a worker's preexisting condition is aggravated, accelerated or intensified by a subsequent industrial injury, the claim is compensable. Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984). Additionally, the stress of a worker's usual labor that causes any lesion in the physical structure of a worker causing harm, may result in a worker suffering a personal injury pursuant to the workers compensation act. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978).

The preliminary hearing record contains the opinions of three doctors concerning whether claimant's work activities aggravated, accelerated or intensified the underlying,

preexisting rheumatoid arthritis condition that resulted in claimant's neck injury and need for subsequent surgical intervention. Dr. Lies opines, within a reasonable degree of medical probability, that claimant's job duties while working for the respondent had no causal connection in the development or continuation of her neck problem. He went on to opine that working may have made the claimant more symptomatic, but it did not aggravate, accelerate or exacerbate the underlying disease process. On the other hand, Dr. Amundson, the orthopedic surgeon who performed surgery on claimant's neck, expressed his opinion, within a reasonable degree of medical probability, that claimant's work activities initiated and aggravated the associated inflammatory condition of rheumatoid arthritis, which was responsible for her symptoms in regard to pain and debility. Robert A. Rawcliffe, Jr., M.D., an orthopedic surgeon in Wichita, Kansas, was appointed by the Administrative Law Judge to perform an independent medical examination of claimant. Dr. Rawcliffe completed the evaluation and examination on December 1, 1995. It is Dr. Rawcliffe's opinion that claimant's basilar invagination neck condition was caused by her rheumatoid arthritis and ultimately would have occurred, even if she simply had been only engaged in normal activities of daily living. However, Dr. Rawcliffe went on to opine that, within a reasonable degree of medical certainty, claimant's work activities, while employed by the respondent did contribute to the acceleration of the process which resulted in the need for surgical intervention.

The Appeals Board recognizes that the definition of "personal injury" has been limited due to the July 1, 1993 amendment, where the personal injury is the result of the natural aging process or caused by the normal activities of day-to-day living. However, the Appeals Board disagrees with respondent's argument that claimant cannot prove a personal injury under this definition if the natural aging process or activities of daily living contributed to claimant's condition. The Appeals Board finds that the July 1, 1993 amendment to the "personal injury" definition does not preclude compensability of a workers compensation claim, if a worker's preexisting condition is aggravated, accelerated or intensified by the worker's normal work activities. The Appeals Board finds, based on claimant's testimony and the medical opinions expressed by Dr. Amundson and Dr. Rawcliffe, that claimant's work activities aggravated and accelerated claimant's preexisting rheumatoid arthritis condition, which necessitated claimant's need for surgical intervention.

(2) Respondent also raised, for review by the Appeals Board, the issue of whether the claimant was entitled to temporary total disability benefits. However, the respondent did not argue the issue in his brief and the Appeals Board, in numerous other decisions, has ruled that the Administrative Law Judge has specific authority pursuant to K.S.A. 44-534a(a)(2) to grant temporary total disability benefits. Therefore, the Appeals Board does not have jurisdiction to review this issue.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on February 15, 1996, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Garry L. Howard, Wichita, KS  
Douglas C. Hobbs, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director